IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

WP(C).No.33079 of 2003(K)

PETITIONER:-

M/S. GOLDEN TRADERS, PMC/XII/B-24,
GANDHI BAZAR, P.P. ROAD, PERUMBAVOOR,
REPRESENTED BY THE MANAGING PARTNER,
BINOY JOSEPH.

BY ADV. SRI.C.K.THANU PILLAI

RESPONDENTS:-

1. THE ASSISTANT COMMISSIONER (ASSESSMENT)-II,
SPECIAL CIRCLE, MATTANCHERY.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
PUBLIC OFFICE BUILDINGS,
THIRUVANANTHAPURAM-695 033.

BY GOVERNMENT PLEADER SRI.K.B.PRADEEP.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

W.P.(C).NO.33079 OF 2003

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 - TRUE COPY OF ORDER NO.24010823/2001-02 DATED 20.03.2003 ISSUED BY THE 1ST RESPONDENT.

EXT.P2 - TRUE COPY OF ORDER NO.C3-61448/01/CT DATED 02.08.2002 ISSUED BY THE 2ND RESPONDENT.

EXT.P3 - TRUE COPY OF ORDER IN W.P.(C).NO.18130 OF 2003 DATED 20.06.2003.

RESPONDENT'S EXHIBITS:-

NIL.

- true copy -

H.L.Dattu,C.J. & K.T.Sankaran,J.

W.P.(C).No.33079 of 2003-K

Dated, this the 7th day of September, 2007

JUDGMENT

H.L.Dattu,C.J.

The petitioner is a partnership firm. It is engaged in the business of sale in plastic goods at Perumbavoor.

(2) The petitioner is also a dealer, registered both under the provisions of the Kerala General Sales Tax Act and Central Sales Tax Act.

(3) In this petition filed under Article 226 and 227 of the Constitution, the petitioner calls in question the correctness or otherwise of the order of assessment passed by the assessing authority for the assessment year 2001-02 dated 20.3.2003. The assessing authority while computing the tax liability of the petitioner has primarily relied upon the clarification issued by the Commissioner of Commercial Taxes, Thiruvananthapuram dated 02.08.2002. The petitioner calls in question the said clarification/circular as well.

(4) It is brought to our notice by the learned counsel appearing for the petitioner that the clarification issued by the Commissioner in No.C3.61448/01/CT dated 2.8.2002 were the subject matter of M.F.A.No.1356 of 2002 and this Court by its order dated 4.10.2005 has quashed the clarification/circular issued by the Commissioner of Commercial Taxes dated 2.8.2002.

(5) The learned counsel appearing for the Revenue does not dispute the assertion made by the learned counsel for the petitioner that in M.F.A.No.1356 of 2002 this Court has quashed the circular issued by the Commissioner dated 2.8.2002.

(6) Respectfully following the observations made in the aforesaid decision, the second relief sought for by the petitioner requires to be granted. Accordingly, the clarification issued by the Commissioner of Commercial Taxes dated 2.8.2002 requires to be quashed.

(7) In so far as the first prayer is concerned, in our opinion, since the assessing authority has primarily relied upon the clarification/circular issued by the Commissioner of Commercial Taxes dated 2.8.2002 while computing the tax liability of the petitioner, the said order of the assessing authority also requires to be set aside and the matter requires to be remitted back to the assessing authority to redo the matter in accordance with law without reference to the clarification/circular issued by the Commissioner of Commercial Taxes.

(8) In view of the above, the following:

Order

(i) The writ petition is allowed.

(ii) The circular/clarification issued by the Commissioner of Commercial Taxes dated 2nd August, 2002 is quashed.

(iii) The order passed by the assessing authority for the assessment year 2001-02 dated 20.3.2003 is set aside.

(iv) The matter is now remitted back to the assessing authority to quantify the tax liability of the petitioner for the assessment year 2001-02 in accordance with law without being influenced by the clarification issued by the Commissioner of Commercial Taxes dated 2nd August, 2002.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/dk